

## CORROBORATING TESTIMONY

### Michael Smith

A number of former Muslim inmates testified that they had been singled out for "special" brutal treatment by troopers and corrections officers because they had played an active role in protecting the hostages during the four days before the retaking. Because a number of militant inmates were prepared to do harm to the hostages, Frank "Black" Smith, in conjunction with the Muslim leadership, implemented a plan to secure the safety of the hostages during negotiations.

This view was corroborated by Michael Smith, age 51, a former corrections officer who was a hostage up to September 13, 1971. He testified that he was taken hostage on September 9, 1971 by a group of inmates who were out of control. He described them as a "wave of human emotion." He was in charge of the sheet metal shop and developed a good rapport with the inmates who worked under him and they protected him from the militant group. But eventually he came under the control of the take-over group and found himself in the center of D-Yard with other hostages. One of the inmates

proved to be his life saver. The inmate was Don Noble whom he had befriended and who worked in the sheet metal shop. Noble protected him on September 9, 1971 and would later save his life on September 13, 1971.

Mr. Smith was interviewed by the media while being held hostage along with Corrections Officer Cunningham. He conveyed what the inmates' demands were for improved conditions and reported that he was not being harmed. He was blindfolded most of the time. Upon receiving news of Corrections Officer Quinn's death, the negotiation process broke down and a different "mood" set in.

On Sunday night, September 12, 1971, the feeling was "somber." He got a pen and wrote a good-bye note to his wife and family on dollar bills which were in his wallet. He testified that the hostages sat in a circle and leaned up against each other for support.

On Monday, September 13, 1971, he was selected, along with a few other hostages to be taken up on the A-Yard catwalk and a hostage execution was arranged. He was taken to the top of the catwalk by three inmates and sat on a chair blindfolded. Inmate Don Noble was on his left and held a knife to his throat. As the Army helicopter hovered over them

and dropped tear gas, the shooting started and the inmate on his right was shot twice and blown over the railing of the catwalk. Don Noble pulled him to his left and the inmate immediately behind him received a fatal volley of gunfire. Noble was shot and Michael Smith was shot four times in the stomach and once in the arm. The chair on which he had been sitting disintegrated from gunshots. Mr. Smith told the Court, "I don't know how long the shooting went on. You could hear people crying, people dying, and people screaming."

He never lost consciousness as he laid on the catwalk until a trooper stood over him pointing a shotgun at his head. He was certain that he was going to be killed. A corrections officer saw what was going on and yelled to the trooper, "he is one of us" and then the trooper focused his attention on Don Noble who was still alive. Michael Smith yelled to the trooper, "he saved my life" and the trooper spared Noble.

He was eventually taken by National Guard medics to St. Jerome's Hospital in Batavia for an extensive period of treatment involving multiple surgeries. He was eventually released from service as a corrections officer because of his physical inability to perform his duties. He commented on the inaccuracy of the McKay Report which claimed that he had been

merely knocked unconscious - no mention of his extensive gunshot wounds nor how they were obtained. He openly stated that his life was saved while he was held hostage because of the dedicated efforts of the Muslim group at Attica. "In fact, I can recall hearing one of the Muslim leaders instructing one of their men that if anyone tries to break through their [Muslim] perimeter to kill them or die protecting the hostages."

I found Mr. Smith to be totally credible and he corroborated testimony given by the former Muslim inmates who claimed they were given unwarranted "special treatment" because they were labeled as "leaders" when, in fact, they were protectors.

**James W. Nicholson**

James Nicholson, age 60, of Medina, New York testified on June 21, 2000 and related events from his vantage point as an inmate in C-Block on the morning of September 13, 1971. Although he was injured on September 9, 1971, he was not qualified to share in the settlement since he is not a class member. (He was not in D-Yard on September 13, 1971.)

Prison records do not reflect that Mr. Nicholson was present in D-Yard. He also testified during the 1991 trial in this litigation, admitting that he was not present in the Yard on September 13, 1971. He was consistent in that view when he offered corroborating testimony in these proceedings. He does not share in the settlement proceeds and fully understands why.

His testimony is helpful because he was a former Sheriff's Deputy from Niagara County and saw many of his former fellow officers preparing themselves to take back the prison on the morning of September 13, 1971. He saw troopers climb to the roof of C-Block using ladders. Each was equipped with a 30 caliber rifle with telescopic lens. There were approximately a dozen of them and they were the sharpshooters assigned positions on top of C-Block. They had a clear shot

at the hostages lined up on the catwalk of A-Block and elsewhere. He was very emotional in describing the shooting that took place and how "unnecessary it was." He had trained officers in riot control as a Sheriff's Deputy and was a former Marine MP and felt that there was no need to use bullets. Tear gas would have been sufficient to subdue the inmates.

After the shooting subsided, he had a clear view of the courtyard outside the infirmary and saw the inmates lying on stretchers waiting their turn for treatment. "It seemed like they laid there for hours" and, indeed, they did. His testimony corroborates the testimony of other witnesses concerning the length of time it took to receive medical treatment for those who were seriously injured.

## Gene Hitchens

Gene Anthony Hitchens of Miami, Florida was a 22-year old inmate at Attica on September 13, 1971 whose claim was disallowed because he was not physically present in D-Yard on that date. He knew in advance of his testimony that he did not qualify to share in the settlement, yet, at his own expense, he traveled from Miami to testify. Although he was otherwise injured, he did not fit the definition set forth in the terms of the settlement requiring that claims could only be honored for those who were class members as defined in a previous Order of the Court in 1979 as those inmates who were present in D-Yard on September 13, 1971. But his testimony is otherwise relevant in explaining the individual tragedy that befell the inmates starting on September 9, 1971 through the retaking on September 13, 1971 and thereafter.

Mr. Hitchens was housed in cell block "C" and assigned to the hospital staff as a hospital worker and as the C-Block runner. As a hospital worker, he was responsible for the intake and discharge processing of inmates at the prison and for assisting the prison physician with the Monday through Friday sick call.

On September 9, 1971 at approximately 9:00 a.m., he was

delivering unit mail to the A-Block side of what was commonly known to the inmate population as Times Square. As he was returning from a trip to the control center desk at A-Block, he was ordered held by one of the Times Square corrections officers on duty who was the first to see a large crowd running through the hallway. Almost halfway down the long breezeway leading to Times Square, he could see a large group of inmates running towards him and the corrections officers pulled him in front of them as they rushed through the Times Square gate and had it locked. It turns out he was the only inmate with three corrections officers who made it past the Times Square checkpoint seconds before the large crowd of inmates arrived.

He saw the officers assigned to Times Square being rushed and they were all being overcome by a large number of inmates who were dressed in athletic gear carrying baseball bats and brandishing other menacing objects. In that instant, he was no longer the trusted messenger who carried confidential information for Attica personnel. Nor was he remembered as the trusted hospital worker assisting inmates and physicians at sick call. In that instant, like so many others, he became a target for hatred and abuse. He was struck over his



shoulder and back by corrections officers with a club and dragged to a cell in C-Block. Confused, he kept asking the officer, "What did I do? Why are you treating me this way?" From his cell he was able to look directly into D-Yard. He was pulled from his cell on a number of occasions and was told that he would be punished severely for Officer Quinn's death because "you were in the exact location of his post when all the shit started." He was also accused of carrying messages and helping the coordination of the inmate uprising and for the plans of escape and movement by the inmates. He was threatened with severe punishment in solitary confinement if he did not confess to his role to alert the rest of the prison to the time and date of the uprising.

When the retaking was ordered on September 13, 1971, two corrections officers arrived at his cell, slammed his face against the window bars, and ordered him to watch "and see what happens to fucking convicts who didn't obey the rules and try to run something." He saw some of the inmates being shot in spite of the fact that they were waving their hands high in the air and begging that their lives be spared. From his cell, he was forced to watch it all unfold in front of him, helpless. It is that memory that has tortured him all these

years.

He had this to say during his testimony about Officer Quinn - who eventually died from head wounds inflicted by inmates who struck him on the head on September 9, 1971.

And I want to say if anybody associated with Officer Quinn is in this courtroom, I am so terribly sorry that that man lost his life.

I've never been in a position to tell that, to say that to anybody that it would have made a difference to.

But that man looked after me. He looked after me and I felt safe because of him, and I guess I was able to hold on to my humanity because of his concern for me.

Mr. Hitchens was an impressive witness. He is currently an associate in a program sponsored by the Kellogg Foundation in Miami, Florida as an outreach program to help children from diverse backgrounds take a positive path with their lives. Mr. Hitchens accepted the fact that he could not share in the settlement fund but wanted the opportunity to testify to state publicly his relationship with Officer Quinn and how unnecessary the suffering and carnage was. His testimony gave much insight to this Court in describing the atmosphere of the period from the start of the uprising on September 9<sup>th</sup> through the retaking on September 13<sup>th</sup> and highlighting the fact that

there were many victims of the Attica episode - not only those who unfortunately were in D-Yard on September 13, 1971.

I'm leaving Attica here today, your Honor.  
This is where Attica ends for me. I'm not  
dragging it. I don't want to talk about  
it. I don't want to live it again.